(21)

HIGH COURT OF CHHATTISGARH, BILASPUR

DB: Hon'ble L.C.Bhadoo, Acting C.J. &
Hon'ble Shri Sunil Kumar Sinha, J

Criminal Appeal No.189/2000

Mangal

Vs.

State of Chhattisgarh

Appearance:

Shri N.K.Mehta, counsel for the appellant.

Shri U.N.S. Deo, Govt.Advocate, for the State.

ORAL JUDGEMENT
(03.01.2007)

Per L.C. Bhadoo, J,

(1) This appeal is directed against the judgment of conviction and order of sentence dated 17.11.1999 passed by the Additional Sessions Judge, Kanker, in Sessions Trial No.120/1998 whereby the learned Addl. Sessions Judge, after holding the accused appellant guilty for commission of the offence u/s 302 of IPC, sentenced him to undergo imprisonment for life.

(2) The case of the prosecution in brief is that P.W.5 Ankalu lodged a report in the Police station Antagarh to the effect that on 3rd October, 1997, the deceased Ankali Bai alongwith accused Mangel came to meet the ailing parents of Ankali Bai at Malmatta. and when on 05.10.1997, they were returning to their village Churegaon, on the way accused attacked the deceased with an Axe which he was carrying thereby committed the murder of Ankali Bai thereafter, the accused took away the sliver belt (Patta) and *Anthi* worn by the deceased and fled from the scene of occurrence. On receiving this report, the Station House Officer, Antagarh,

(22)

registered Crime No.39/1997 u/s 302 of IPC. The investigating officer left for the scene of occurrence. After giving notice Ex.P-1, to the *Panchas*, prepared inquest Ex.P-2 on the body of the deceased. The plain soil and the blood stained soil were collected from the place of occurrence under Ex.P-3. The Axe and the ornaments of the deceased were seized vide Ex.P-4 from the possession of the accused. The body of Ankali Bai was sent for post-mortem examination to Primary Health Center, Antagarh where Dr. K.C. Raikwar and A.S. Tadobi, conducted the postmortem on the body of Ankali Bai and prepared the post mortem Ex.P-5/A and opined that the death was due to shock, as a result of cutting of large blood vessels of neck which is homicidal in nature. The clothes of the accused were also seized vide Ex.P-5. The Axe was sent to the Assistant Surgeon, for examination vide Ex.P-6, on which, he gave report (Ex.P-6/A). The clothes of the accused and the deceased were also examined by the Doctor. He found blood stains on those clothes and advised for chemical examination. He gave report Ex.P-7/A. The site plan Ex.P-8 on the place of occurrence was prepared. The recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where the report Ex.P-14 was received.

(3) After completion of the investigation, the charge sheet was filed in the court of J.M.F.C., Narayanpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from where the learned Addl. Sessions Judge, Kanker, received the case on transfer for trial. The prosecution, in order to establish the charge, examined as many as 12 witnesses. The statement of the accused was

(23)

recorded u/s 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that the witnesses are liars and he is innocent.

(4) The learned Addl. Sessions Judge, after hearing the counsel for the parties and considering the material on record convicted the accused and sentenced him as aforementioned.

(5) We have heard Mr.Neeraj Mehta, counsel for the appellant and Shri U.N.S. Deo, Addl. Public Prosecutor, for the state.

(6) Perused the record and judgment of the trial Court.

(7) Mr. Mehta, has not disputed the homicidal death of Ankali Bai, apart from the medical evidence of Dr.Krishna Chandra Gaikwad who stated that there was a cut injury on the back side of the ear which was extended upto the skull in the size of 4" x 1 ½ " x 4 ¾". There was an incised wound on the right lateral side of neck from thyroid cartilage to cervical vertebra in size of 4 ½ " x 1 ½ " x 4". There was a fracture of cervical vertebra and the same was separated from the base of the skull. On internal examination, the cervical vertebra was found fractured and was also cut from the base. The brain mater was liquified. The above injuries were caused by hard and sharp object. The cause of death was shock as a result of cutting of the large blood vessels, death was homicidal. His report is Ex-P.5. In view of the above evidence of the Doctor, it is established that the death of Ankali Bai was homicidal in nature.

(8) As far as the involvement of the accused in crime in question is concerned, there is no ocular and direct evidence in this case.

(24)

The conviction rests upon circumstantial evidence and as per the settled law, in order to convict an accused based on the circumstantial evidence, the Apex court in a decision rendered in ***Dhananjoy Chatterjee –Vs- State of W.B (1994) 2 SCC 220,*** held that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof".

(9) The prosecution has tried to establish the crime against the accused on the following circumstances:

i) that the deceased was last seen alive together with the accused just before her death;

ii) that the accused made extra judicial confession before the brother, mother and father of the deceased as also the villagers of Malmata.

(25)

iii) That the silver belt (patta) and *Anthi* which she were wearing at the time of the death were recovered at the instance of the accused from his house;

iv) The weapon of the offence i.e., Axe was recovered at the instance of the accused

v) The clothes of the accused were found stained with blood; and

vi) That the conduct of the accused after commission of crime that he has not explained as to in what circumstances the death of Ankali Bai was occurred.

(10) As far as first circumstance is concerned, P.W.3 Sunder Singh, the father of deceased Ankali Bai has stated that the accused is his son-in-law, his daughter Ankali Bai was married to the accused, they used to reside in village Churegaon. The accused and his daughter came to their village on the fateful day and near about the sun-set, they left for their village Churegaon. The distance between his village Malmatta and village of the accused Churegaon is about two miles. On the next day morning, the villagers of Mahurpat came and informed about the death of his daughter. He went to the scene of occurrence and saw the injury on the neck of his daughter. He has further stated that when the accused and his daughter left his house, the accused was carrying an Axe, his daughter was wearing silver belt (patta) and *Anthi*. The accused went to his village from where he was brought. Similar is the evidence of P.W.4 Baisakhin Bai, the mother of the deceased and the mother-in-law of the accused who has also supported the

(26)

evidence of P.W.3 Sunder Singh and evidence of P.W.3 Ankalu who lodged First Information Report. He is the brother of the deceased and brother-in-law of the accused. In the cross-examination of these witnesses, the defence has not been able to discredit the evidence of these witnesses to the extent that the accused and deceased came to house of Sunder Singh. In the evening of the incident, the accused and deceased left their house. As per the decision of the Apex Court in the matter of ***Bodhraj @ Bodha and others –Vs- State of Jammu and Kashmir, reported in (2002) 8 SCC 45***, the theory of last seen comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and deceased were last seen together. In the matter of ***Subhash Chand –Vs- State of Rajasthan reported in (2002) 1 SCC 702,*** the Apex Court held that to constitute evidence of last seen together, the evidence must definitely permit an inference being drawn that the victim and the accused were seen together at a point of time in close proximity with the time and date of commission of crime.

In light of the above decisions, if we scrutinize the evidence of above 3 witnesses, all the three have stated that in the evening of the date of incident, the accused and deceased left together, accused was carrying an Axe in his hand. The deceased was wearing silver patta and *Anthi*. In the morning, ~~Mahurpat~~ the body

(27)

of Ankali Bai was found. But the accused had not explained as to when he departed the company of Ankali Bai and how Ankali Bai died ? He remained silent. He explained only when the villagers of village Malmatta came and took him to the village Malmatta where he made extra judicial confession that he committed murder of his wife. Therefore, it is established that the deceased was seen alive in the company of the accused just before her death and the accused has not explained as to in between any third person came, who committed the crime.

(11) As far as the second circumstance is concerned, as per the settled law, for resting conviction on extra judicial confession, it has to be established that the extra judicial confession made by the accused is prompt, voluntary and truth. P.W.2 Samrat of village Mahurpat has stated that the neck of the deceased was cut. The father of the deceased has informed them that in the evening of the date of incident, the accused and deceased left for their village. He along with the villagers went to call the accused in village Churegaon where on enquiry the accused informed them that he has committed murder of his wife at their village. He had further confessed that he committed the murder with an Axe, thereafter they took the accused to their village Mahurpat. In the cross examination, this witness has stated that the accused was taken to their village. P.W.3 Sunder Singh, father of the deceased has also stated that the villagers of Mahurpat brought his son-in-law to their village and there the accused confessed that he has committed the murder of his wife. He has also taken the *Anthi*, he denied the suggestion of defence counsel that the accused made

(28)

extra judicial confession on threatening given by the Police. P.W.6 Bajju of village Mahurpat has also corroborated the above evidence and stated that he alongwith the villagers went to the village of accused to bring him, when they reached to the village of accused namely Churegarh, he confessed that he has committed the murder of his wife with an Axe, thereafter, they took the accused to the place of occurrence where the dead body was lying. He also confessed that he committed the murder with an Axe which is kept in his house. P.W.7 Sukhlal has also corroborated the evidence regarding the extra judicial confession made by the accused before them. Therefore, from the evidence of these witnesses apart from the mother and father of the deceased, before the independent witnesses who went to the village of the accused to bring him, the accused made extra judicial confession. Even in the cross examination of this witness on the aspect of extra judicial confession made by the accused before these witnesses, there is nothing to discredit the evidence of these witnesses regarding extra judicial confession made before them. Therefore, the evidence of these witnesses inspires confidence of the Court that the accused made extra judicial confession before these witnesses which was voluntary and true that he committed the murder of his wife with an Axe.

(12) As far as the 3rd and 4th circumstances are concerned, P.W.12 U.R. Diwan, investing officer, has stated that the accused produced the Axe, the silver patta and *Anthi* which were seized vide Ex.P-4. During the cross examination of this witness, the defence has not been able to challenge the above evidence of U.R. Diwan.

29

Even in the cross-examination, this witness has stated that the Axe was seized from the accused. There is no further cross examination by the defence. This witness has stated that the Axe, the weapon of the offence was taken in to possession from the accused.

(13) As far as 5th circumstance is concerned, P.W.12 U.R. Diwan, Investigating Officer, has stated that on 6.10.1997 on being produced by the accused the clothes of the accused i.e., Lungi and Banian stained with blood were seized under Ex.P-5, on this aspect, this witness has not been cross examined. These clothes were shown to P.W.8 Dr.Krishna Chandra Gaikwad, on 10.10.1997 on the request of the S.H.O., Police station Antagarh, he examined the Lungi and Banian on which the stains like blood were present, he advised for chemical examination and as per the report of the chemical examiner P.W.14, the blood was found on Lungi and Banian of the accused, therefore, it is established that the clothes of the accused stained with blood were taken into possession.

(14) As far as the circumstance that the silver ornaments i.e., *Patta* and *Anthi* which the deceased were wearing at the time of commission of the offence were seized from the possession of accused, is concerned; P.W.12 U.R. Diwan has stated that the silver patta and Anthi were seized vide Ex.P.4 on being produced by the accused and P.W.3 Sunder Singh, P.W.4 Baisakhin Bai have categorically stated that the deceased was wearing a silver patta and Anthi. P.W.5 Ankalu, the brother of the deceased has stated in para 2 that when he saw the dead body, the silver patta and *Anthi* were not on the body of his sister, these ornaments were

HO (30)

seized by the investigating officer from the possession of the accused vide Ex.P-4. In ***Ronny @ Ronald James Alwaris etc., V. State of Maharashtra, AIR 1998 S.C., 1251*** vide para 31 of the judgment the Apex court held that recovery of articles belonging to the deceased family from the possession of the accused soon after the incident, the possession remained unexplained by the accused, so the presumption under illustration (a) of section 114 of the Evidence Act will be attracted. It needs no discussion to conclude that the murder and robbery of articles were found to be part of the same transaction. The irresistible conclusion would, therefore, be that the accused and no one else had committed the murder and the robbery. Similarly, in the matter of ***Nawabuddin @ Nawab Vs. State of Delhi reported in AIR 2001 S.C. 979,*** the Apex Court further held that the accused persons from whom the recoveries were made consequent upon their disclosure statement, did not offer any explanation regarding their possession of the stolen properties. Thus by drawing a presumption under section 114 of the Evidence Act, it can safely be held that the accused persons were atleast guilty of the offence of robbery.

(15) In view of the above law, the evidence on record that the deceased was wearing *Anthi* and silver patta at the time of commission of the crime and as per the evidence of P.W.5 Ankalu when he saw the dead body of the deceased, these ornaments were missing, same were seized from the possession of accused under Ex.P.4, establishes the involvement of the accused in the crime that after committing the crime, he took away these ornaments.

(31)

As far as last circumstance is concerned, as discussed in the earlier part of the judgment that the accused and the deceased left together in the evening the house of the in-laws that is parents house of the deceased situated in village Malmeta for going to their house in village Churegaon, on the way the dead-body of Ankali Bai was found in the next day morning. The accused was in his house and he neither reported the missing of his wife nor made any explanation regarding absence of his wife, when he departed the company of his wife and what happened thereafter. On the contrary, when villagers of the village Malmatta came to the house of the accused in village Churegaon, he made extra judicial confession before them that he committed murder of his wife Ankali Bai. Therefore, the conduct of the accused not explaining about the death of his wife establishes the involvement of the accused in the crime in question. Section 106 of the Evidence Act envisages that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. When the accused and the deceased were coming together back to their village Churegaon in the fateful night, it was within the special knowledge of this accused that when his wife departed his company and how the crime was committed. He ought to have explained those circumstances. On the contrary, he was sitting silent in his house without telling anybody regarding absence of his wife, therefore, this circumstance also establishes the involvement of the accused in the crime in question.

(16) For the reasons stated herein above, all these circumstances cumulatively complete the chain of circumstances for arriving at

(32)

an irresistible conclusion that the accused was author of the crime in question. There is no possibility of coming any third person in between in committing the crime.

(17) In the result, we do not find any illegality and infirmity in the judgment of the trial Court convicting the accused for the commission of murder of his wife.

(18) The appeal being devoid of merit liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Rao